IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 42 OF 1990

Deepak Parshuram Shinde]
residing at Solapur, presently]..Appellant
in Solapur Jail] (Ori. Accused No.1)

versus

State of Maharashtra]..Respondents

Dr. F. R. Shaikh, APP for the State.

WITH

CRIMINAL REVISION APPLICATION NO. 118 OF 1990

Arvind Haridas Zagade]..Petitioner
809, North Kasba, Solapur](Ori.Complainant)

versus

1. Deepak Parshuram Shinde]
2. Avinash Parshuram Shinde]
3. Jainoddin Kadarsaheb Shaikh]
4. Sunil Sakharam Bhosale]
5. Arun Malkar Rankhambe]
Nos. 1, 2 and 4 residents of]
129, Budhwar Peth, Solapur]
No.3 resident of 191/17]
Budhwar Peth, Solapur]..Respondents
No.5 resident of 176, Budhwar] (Nos. 1 to 5
Peth, Solapur] Ori. Accused
6. The State of Maharashtra] Nos. 1 to 5)

Mr. P. M. Mengane for the Appellant.
Dr. F. R. Shaikh, APP for the State.

WITH
CRIMINAL APPEAL NO. 173 OF 1990

The State of Maharashtra]..Appellant

versus

1. Deepak Parshuram Shinde]
age 21 years]
2. Avinash Parshuram Shinde]
age 23 years]
both r/o. 129, Budhwar Peth]
Solapur]
3. Jainoddin Kadarsaheb Shaikh]
age 18 years]
r/o. 191/17, Budhawar Peth]
Solapur]
4. Sunil Sakharam Bhosale,]
age 20 years]
R/o. 129, Budhawar Peth,]
Solapur]
5. Arun Malhar Rankhambe]
age 21 years]..Respondents
R/o. 176, Budhwar Peth,](Ori. Accused)
Solapur]

Dr. F. R. Shaikh, APP for the State.

CORAM : D. G. DESHPANDE, &
S. R. SATHE, JJ.
DATE : 16TH JANUARY, 2007.

ORAL JUDGMENT : (PER : D. G. DESHPANDE, J) :

1. Appeal No. 42 of 1990 is filed by the accused No.1 against his conviction. Appeal No. 173 of 1990 is filed by the State against acquittal

of the accused and Criminal Revision application No. 118 of 1990 is filed by the complainant.

2. Five accused in all were prosecuted before the Additional Sessions Judge, Solapur, in Sessions Case No. 173 of 1989. They were all college going boys. The case of the prosecution against them was that these accused assaulted number of other boys of the same college and caused the death of Sanjay Dhumma. The trial court found that out of the five accused, accused No.1 Deepak Shinde was found guilty and was convicted under Section 304 (Part-II) of the Indian Penal Code and sentenced to suffer R.I. for five years and fine of Rs.3,000/- in default R.I. for three months. The other accused were acquitted by the trial court. Accused No. 1 was also acquitted of offence under Sections 147, 148, 302 read with 149 of IPC and under Section 135 and 37(1) of Bombay Police Act. Therefore, the convicted accused No.1 has preferred his separate appeal vide Appeal No. 42 of 1990. Complainant has preferred Criminal Revision Application No. 118 of 1990. The State has filed Criminal Appeal No. 173 of 1990 against the acquittal of the accused.

3. We have heard the Advocates for the Accused,

Complainant and the learned APP for the State at length.

4. We do not find any reason to interfere with the order of the trial court so far as it relates to acquittal of other accused i.e. accused Nos. 2 to 5 from all other offences and acquittal of the accused No.1 from the offences under Sections 147, 148, 149, 302 and conviction of accused No.1 under Section 304 (Part - II) of the I.P.C. for the following reasons:

5. As per the prosecution case, there was annual gathering of Walchand College of Arts Faculty. On 8.2.1989 in the morning between 8.30 A.M. to 10.30 A.M. fun-fair was arranged but because of bursting of crackers, it was abandoned. Many students including Arvind Zagade (P.W. 3) and Ashok Nimbargi (P.W. 8) were chit chatting in front of the staff room of the college where accused No.1 Deepak picked up a quarrel with Shankar Pawar. Ravi Kore and Arvind Zagade intervened and stopped the quarrel. Shankar Pawar and Narsayya Jangam made a complaint to the Principal of Walchand College of Arts, about this incident. In that complaint

accused Nos. 3, 4 and 5 were also implicated. When Dashrathsing Chavan (P.W. 2) came out of his office, he saw accused No.1 Deepak Shinde in a violent mood. He tried to catch hold of Deepak Shinde but accused No.1 Deepak Shinde ran away.

6. On the same day at about 1.45 p.m. P.W. 3 Arvind Zagade, P.W. 8 Ashok Nimbargi and others had assembled at college premises as they wanted to practice a programme which they were going to perform in the variety entertainment programme. They were standing near the staff room. At that time accused Nos. 1, 2, 3, 4 and 5 came there. Accused No.1 Deepak Shinde threatened Ashok Nimbargi (P.W. 8). Arvind Zagade (P.W. 3) and Ravi Kore intervened but accused No.1 Deepak Shinde abused Arvind Zagade and his friends and expressed that he would teach a lesson to Sanjay Dhumma. At that time Sanjay Dhumma entered the college premises. Then accused No.1 roared at Sanjay Dhumma. Some bricks were thrown at him. Accused Nos. 2 and 4 threw the bricks at the other group. Deepak Shinde - Accused No.1 and Jainoddin Shaikh - Accused No.3 started beating Sanjay Dhumma with fist blows and kicks and at that time Deepak Shinde - accused No.1 brandished

a knife and gave blow on the left cheek of Sanjay Dhumma and another blow on the left side stomach of Sanjay Dhumma. It is alleged that the other accused were holding Sanjay Dhumma at that time. Thereafter the Accused ran away. Sanjay Dhumma was admitted to the hospital. While on way to the hospital, Sanjay Dhumma told about the assault on him by Deepak Shinde. This was made to one Ramesh Bhogade but in the hospital Sanjay was declared dead. It is in this background, that the accused came to be prosecuted. During investigation, spot panchnama was drawn, statements of witnesses were recorded, incriminating articles were seized including clothes of the accused. Accused were arrested, statements under Section 27 of the Evidence Act were recorded, particularly, from accused No.1 regarding the knife stained with blood. It was seized. All those Articles were sent to C.A. and charge sheet was filed.

7. Trial court minutely scanned the evidence of the witnesses, who were mostly students. These accused were also students in their early 20’s and came to the conclusion that there was no evidence to hold that any unlawful assembly was formed. The

trial Court also found that there was no evidence to come to the conclusion that other accused Nos. 2 to 5 were guilty and it was also found that the knife was taken out by Deepak Shinde - Accused No.1 in a heat of moment. Other accused were not supposed to know that accused No.1 was carrying the knife and therefore they could not be foisted with the knowledge. Then according to the trial court injury on the cheek of Sanjay Dhumma was superficial, second blow on the stomach was given during scuffle and there was no intention to cause death or to cause such bodily injury which could be sufficient to cause death. The object of giving blow was found to be simply to over-barge Sanjay Dhumma. The trial court also found that accused No.1 had received certain blows on his face because he was referred to the Medical Officer as per Exhibit 47 and which was clear from the evidence of Gajanand Mitragotri (P.W. 9).

8. Even after hearing the learned APP and the Advocate for the Accused and Complainant, we are not inclined to interfere with the order of acquittal of Accused Nos. 2 to 5. As rightly observed by the trial court both the groups of boys were college

going students, quarrel between them was very petty. No inference of any intention to take revenge of such a brutal nature could be drawn against them. The quarrel was between two group of students which sparkled on the spur of moment regarding role attributed to accused Nos. 2 to 5 that they held Sanjay Dhumma and then accused No.1 dealt knife blows to him, we do not find the evidence of the witnesses is consistent and credible. Sanjay Dhumma was actually not figured in the earlier quarrel, he was not the person to lodge complaint to the Principal. It is not that the dispute between Accused No.1 and Sanjay Dhumma was started earlier and then it culminated into this. Witnesses are not consistent as to why Sanjay was involved in this quarrel. The incident in the morning on that day had nothing to do with Sanjay and therefore there was no reason for all the five accused to hold Sanjay and then accused No.1 to give a knife blow. The trial court rightly rejected the case under Sections 148, 148, 149. Mere forming of two groups because of a petty quarrel, would not in such circumstances, and, particularly, in college campus, amount to formation of unlawful assembly. Therefore, the Appeal filed by the State challenging

the acquittal of accused Nos. 2 to 5 cannot be allowed.

9. So far as appeal filed by the accused No.1 is concerned, he was rightly convicted by the trial court under Section 304 (Part-II). Apart from the evidence of eye witnesses, who were other students, recovery of the knife at the instance of accused No.1 under Section 27 was sufficient for the Court to hold him guilty. We find that accused No.1 could not have been in the circumstances of the case and in the background convicted for offence under section 302. He was rightly convicted under Section 304 (Part-II). For the same reason, we do not find any merit in the Criminal Revision Application filed by the complainant.

10. It appears from the cross-examination of P.W. 3 Arvind Zagade, who is an eye witness that the defence of the accused was that Sanjay was aggressor he had given fists blow on the face of accused No.1 and then accused No.1 took out a knife. The fact that accused No.1 was referred to doctor in this background shows that there was not only quarrel about exchange of fist blows between two

groups when the knife was taken out by accused No.1 and followed by two blows; one causing superficial injury on the cheek and the other causing injury on the stomach. The said injuries as per the post mortem report "an incised stab wound on the left side chest 6th interposed space oblique in direction about 6 inches laterally to centre of chest merging regular and clean cut". This is the injury which has caused the death of Sanjay, the cause of death is Traumatic & Haemorahagic shock due to stab injuries of chest. In the circumstances, we pass the following order:

ORDER

. Appeal filed by the accused along with Revision Application of the Complainant, so also Appeal filed by the State against acquittal, are dismissed.

. Judgment of the conviction and sentence imposed upon the accused No.1 passed by the trial court is maintained as it is. His bail bond stands cancelled.

. He should surrender before the trial court within four weeks from today. If he fails to surrender, the trial court will take action under Criminal Procedure Code to sent him to jail to undergo the sentence.

(D.G. DESHPANDE, J.)

(S. R. SATHE, J.)